

LEONARDO M. RAPADAS

United States Attorney

MIKEL SCHWAB

Assistant U. S. Attorney

JESSICA F. CRUZ

Assistant U. S. Attorney

Sirena Plaza, Suite 500

108 Hernan Cortez Avenue

Hagatna, GU 96910

(671) 472-7332

(671) 472-7215

GREGORY G. KATSAS

Assistant Attorney General

DAVID J. KLINE

Director

VICTOR M. LAWRENCE

Principal Assistant Director

SAMUEL P. GO

Trial Attorney

Office of Immigration Litigation

District Court Section

Civil Division

U.S. Department of Justice

P.O. Box 868, Ben Franklin Station

Washington, D.C. 20044

(202) 353-9923

(202) 616-8962 (facsimile)

Attorneys for Defendant United States of America

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN MARIANA ISLANDS

MOHAMMAD KAMAL HOSSAIN,

Plaintiff,

v.

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS, and
MATTHEW GREGORY, in his official
capacity as Attorney General of the
Commonwealth of the Northern Mariana
Islands, and UNITED STATES OF
AMERICA,

Defendants.

Civil Action No. 08-0016

**DEFENDANT UNITED STATES OF
AMERICA'S CLARIFICATION TO
THEIR MOTION TO DISMISS
PLAINTIFF'S COMPLAINT**

Hearing: **October 16, 2008**
Time: **9:00 a.m.**

1 Defendant United States of America, through its undersigned counsel, hereby submits this
2 Clarification to its Motion to Dismiss the Complaint for Declaratory, Injunctive, Compensatory and
3 Further Relief in accordance with Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which
4 relief can be granted.

5 Defendant United States, in Page 9 of its Memorandum of Points and Authorities in Support
6 of its Motion to Dismiss ("Memorandum"), states that:

7 [i]n including language in the Consolidated Natural Resources Act of 2008 that
8 expressly states that INA § 208, 8 U.S.C. § 1158 shall not apply until the end of the
9 transition period (December 31, 2014), Congress made clear its intent for asylum in
10 CNMI to remain under CNMI's control during this time.

11 Memorandum at 9. Later, in Pages 9-10 of its Memorandum, Defendant United States, asserts that:

12 Congress also determined that having CNMI maintain control of its asylum matters
13 until the end of the transition period is the best way to accomplish this objective,
14 given the numerous changes that need to occur in transition from the affirmative
15 asylum process in CNMI-based legislation to the INA.

16 Memorandum at 9-10.

17 These Memorandum excerpts require clarification. Pursuant to the Consolidated Natural
18 Resources Act of 2008 ("CNRA")(also known as Public Law 110-229) Immigration and Nationality
19 Act ("INA") § 208, 8 U.S.C. § 1158 will not apply to the Commonwealth of the Northern Mariana
20 Islands ("CNMI") until the end of the transition period, in 2014. However, Federal authorities will
21 assume responsibility for the enforcement and administration of immigration law in the CNMI,
22 including protection from persecution, on the transition program effective date, which is June 1,
23 2009, unless delayed up to 180 days by the Secretary of Homeland Security. The INA and other
24 Federal immigration laws will apply in the CNMI as they do elsewhere in the United States as of that
25 date, unless otherwise specified by law. Consequently, after the transition program effective date,
26 the United States shall have jurisdiction over immigration in the CNMI. CNMI protection law will
27 no longer apply, and CNMI officials will no longer have protection law responsibilities after the
28 transition program effective date. These responsibilities will transfer to the Federal Government.

Nevertheless, the enactment of the CNRA underscores the fact that currently, CNMI has sole
authority to control admission onto its islands, as immigration law in the CNMI is under the CNMI's
authority. The INA is currently inapplicable to the CNMI. These facts will not change until the

1 transition program effective date, in which Federal authorities will assume control and responsibility
2 of the CNMI's immigration, and Federal immigration laws, including the INA, will apply. However,
3 pursuant to the express provisions of the CNRA, INA § 208 will not apply until the end of the
4 transition period, in 2014.

5
6 RESPECTFULLY SUBMITTED: this 2nd day of October, 2008.

7 LEONARDO M. RAPADAS
United States Attorney

8 /s/ Jessica F. Cruz
9 MIKEL SCHWAB
JESSICA F. CRUZ

10 GREGORY G. KATSAS
11 Assistant Attorney General
DAVID J. KLINE
Director
12 VICTOR M. LAWRENCE
Principal Assistant Director

13 /s/ Samuel P. Go
14 SAMUEL P. GO
15 Trial Attorney
Office of Immigration Litigation
16 District Court Section
Civil Division
17 U.S. Department of Justice

18 Attorneys for Defendant
United States